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**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: February 4, 2011

TO: The Committee on Rules, Open Government and Intergovernmental Relations

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Ethics Commission Hearings and Administrative Law Judges
Docketed for Rules Committee Consideration on February 16, 2011

The San Diego Municipal Code currently provides the following options for the Ethics Commission with respect to the appointment of one or more hearing officers to preside over the Commission's administrative hearings: (1) the entire Ethics Commission sitting as a hearing panel; (2) an ad hoc subcommittee composed of three Commissioners; or (3) an individual selected from a list of volunteers.¹ SDMC § 26.0435(b).

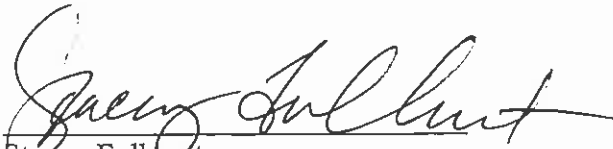
The Ethics Commission held several hearings during the past year that required volunteer Commissioners to spend a tremendous amount of time handling pre-hearing issues and attending hearings. As a result, the Commission asked staff to look into the possibility of retaining a local administrative law judge to preside over the hearings on an as-needed basis. Staff researched the issue and advised the Commission that other jurisdictions routinely use administrative law judges for such hearings. In addition, staff conferred with the State Office of Administrative Hearings and confirmed the availability of local administrative law judges to hear Commission matters. Accordingly, the Commission recommends an amendment to the Municipal Code to add the option of appointing an administrative law judge to preside over a Commission hearing.

Although there is an hourly fee associated with the use of administrative law judges, the Commission does not plan to request an increase to its annual budget for FY12. Instead, the Commission staff is currently working with the Financial Management Department on a reallocation of existing budgeted funds for FY12 to enable the Commission to pay for administrative law judges, as needed. Obviously, if there are not sufficient funds in the Commission's budget to pay for an administrative law judge to preside over a specific matter, the Commission will select one of the other options with respect to the appointment of hearing officers.

¹ When a subcommittee of Commissioners or a volunteer hearing officer presides over a hearing, a written recommendation is submitted to the full Commission, which then deliberates in open session with respect to the final determination. The same procedure would be followed if an administrative law judge presided over a hearing.

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For your convenience, we have drafted the attached strike-out version reflecting the proposed amendment to the Municipal Code, which is scheduled to be considered by the Rules Committee on February 16, 2011. If you have any questions, please contact me at your convenience.

A handwritten signature in black ink, appearing to read "Stacey Fulhorst", written over a horizontal line.

Stacey Fulhorst
Executive Director

Attachment

cc: Catherine Bradley, Chief Deputy City Attorney

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S Enforcement Procedures

PROPOSED AMENDMENTS

Rev. February 8, 2011

Chapter 2: Government Article 6: Boards and Commissions Division 4: Ethics Commission

§26.0402 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

Administrative Enforcement Order to Preliminary Review [no change in text]

Presiding Authority means either one *Commissioner*, the full *Commission*, an ad hoc subcommittee of three Commissioners, ~~or someone selected by the Commission from a list of pre-qualified individuals, or an administrative law judge,~~ to conduct the *Probable Cause Hearing* or the *Administrative Hearing*.

Presiding Authority's Recommendation means a written report prepared by the individual, administrative law judge, or ad hoc subcommittee conducting the *Administrative Hearing* that contains findings of fact, a summary of the evidence supporting each finding, a preliminary determination of whether or not the *Respondent* violated *Governmental Ethics Laws*, findings to support the preliminary determination, and a recommended penalty for each violation.

Probable Cause through *Subpoena duces tecum* [No change in text.]

§26.0435 Preparation for Administrative Hearing

- (a) [no change in text]
- (b) As soon as practicable, but no later than thirty calendar days after ordering that a public *Administrative Hearing* be conducted, the *Commission* shall take the following action:
 - (1) Appoint a *Petitioner* to prepare and present the case against the *Respondent* to be heard at the *Administrative Hearing*. The *Executive Director* shall

serve as the *Petitioner* unless the *Commission*, at its discretion, selects someone else from a list of pre-qualified individuals retained to serve as *Petitioners*.

- (2) Appoint a *Presiding Authority* to conduct the *Administrative Hearing*. At the discretion of the *Commission*, the *Presiding Authority* shall be one of the following:

- (A) The entire *Commission* sitting as a hearing panel; or
- (B) An ad hoc subcommittee composed of three Commissioners; or
- (C) A hearing officer who is either an administrative law judge provided by the California Office of Administrative Hearings, or an ~~An~~ individual selected from a list of volunteers who have been pre-qualified to meet or exceed minimum qualification criteria for training and experience as established by the *Commission*.

(c) – (h) [no change in text]